

HOUSE
RESEARCH

HB 869
Tallas

ORGANIZATION bill analysis

4/27/89

(CSHB 869 by Polumbo)

SUBJECT: Polygraph examination of police and fire fighters

COMMITTEE: Urban Affairs: committee substitute recommended

VOTE: 7 ayes--Pierce, Beauchamp, Edwards, Haggerty, Hunter, Polumbo, Shea

0 nays

4 absent--P. Moreno, Blair, Lucio, Park

WITNESSES: For--Mark Clark, Houston Police Officers Association; T. A. Britt, Houston Police Patrolmen's Union. (Eight others registered in support of the bill but did not testify.)

Against--Joe L. Breshears, Houston Police Department; Eric Holden and Bobby B. Jones, Texas Association of Polygraph Examiners; Michael Courville, Texas Police Chiefs Association

On--Bryan Perot, Polygraph Examiners Board

BACKGROUND: Under sec. 143.124, Local Government Code, a Houston police officer or fire fighter generally may not be required to take a polygraph examination as part of a misconduct investigation unless the person filing the complaint also takes and passes such a test. A police officer or fire fighter under investigation cannot be required to submit to the test before seeing the results of the complainant's polygraph exam. However, a department head may order an officer to submit to the test if he considers the circumstances to be extraordinary or that the integrity of the officer or of the department is in question.

DIGEST: CSHB 869 would amend sec. 143.124, Local Government Code, to provide that no police officer or fire fighter could be suspended, terminated or otherwise discriminated against by the municipality for refusing to take a polygraph exam. The current provision, and the exceptions, would be eliminated. This bill would apply only to cities with a population of 1.5 million or more (Houston).

SUPPORTERS
SAY:

Requiring a police officer or a fire fighter to submit to a polygraph exam or face suspension, termination or other sanctions is a form of employment discrimination. Management wants to retain the power to require such tests in order to intimidate officers. These tests serve no legitimate purpose, because the results of a polygraph exam are not admissible in court nor before a hearings examiner.

HB 869 would strengthen provisions in the law protecting Houston police officers and fire fighters against being forced to take polygraph tests. The bill would eliminate loopholes and make it clear that no disciplinary action could be taken upon a refusal to take a test.

Polygraph tests are unreliable. Repeating the test on the same subject but with different operators can produce different results. A pathological liar can beat the test, casting doubt on the credibility of the procedure in any circumstance.

The Legislature passed a measure in 1987 giving Department of Public Safety officers the same protection as offered in this bill. Police officers and fire fighters in the state's largest city should be treated in precisely the same way.

OPPONENTS
SAY:

Polygraph exams are often needed to finalize certain types of administrative investigations. Because there is no evidentiary value to the test, there can be no harm in using it as an investigatory tool. It has been found to be very useful in leading to other clues in investigations.

Polygraph exams are much more reliable than their detractors claim. Without them, investigations would have to revert to the days when perceptions of credibility, gut feelings and bias were all that could be used in internal investigations. This bill would let an officer block the investigation of a citizen's complaint.

NOTES:

The committee substitute provides that a police officer or fire fighter "shall not" be disciplined for refusal to take a polygraph test, rather than "may not", as in the original bill. The substitute also clarifies that the bill would apply to both fire fighters and police officers.

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A related bill, HB 890 by Taylor, states that a peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination because he refused to take a polygraph examination. HB 890 has been referred to the Committee on Public Safety. The companion bill to HB 890, SB 190 by Lyon, passed the Senate by 29 to 1 (Bivins) on Feb. 20 and has been referred to the House Public Safety Committee.